



CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

General Counsel

14 October 1988

NOTE FOR: Executive Director

Jim:

Attached is a slightly revised version of our transition paper on law enforcement issues. We would be happy to receive any suggestions that you or the others working on this project have for improvements.

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## LAW ENFORCEMENT ISSUES

CIA's role in the law enforcement process is defined primarily by the National Security Act of 1947. That Act explicitly prohibits the Agency from exercising police, law enforcement, or internal security powers. The Act also directly charges the Director of Central Intelligence with the responsibility for protecting intelligence sources and methods.

As a consequence, the Agency generally does not participate directly in activities that are conducted solely for law enforcement purposes (i.e., CIA does not directly participate in arrests or in criminal investigations). Similarly, the Agency generally refrains from collecting and disseminating intelligence specifically for use as evidence in criminal proceedings when that evidence, or the sources and methods from which it was produced, may be subject to discovery and disclosure.

Certain types of CIA assistance to law enforcement authorities, however, are permitted under the National Security Act. Executive Order 12333 explicitly authorizes the agencies of the intelligence community to provide assistance to law enforcement authorities, and specifically authorizes such assistance in counterintelligence, counterterrorism, and counternarcotics investigations. Over the past several years, CIA has responded to requests for increased assistance to law enforcement authorities, and has enhanced its intelligence collection capabilities, in each of these areas.

The Executive Order permits the Agency to provide two general types of assistance to other federal agencies, including law enforcement agencies. The Agency may provide law enforcement agencies with certain training, specialized equipment, technical knowledge, or assistance of expert personnel. CIA may also provide intelligence it has lawfully collected to appropriate law enforcement authorities. Usually, this intelligence is not provided to law enforcement authorities for direct use as evidence. Instead, such intelligence is normally provided for "lead purposes only," to assist the other agency in an ongoing investigation, or in some circumstances, for use in interdiction activities.

The dissemination of intelligence to law enforcement authorities on a "lead purposes only" basis is intended to protect Agency sources and methods from disclosure or compromise. This need to protect CIA sources and methods may clash with a defendant's discovery rights if CIA information is implicated in a criminal prosecution. These concerns are particularly strong in the areas of counterterrorism and counternarcotics investigations, where recently enacted statutes have enhanced the extra-territorial jurisdiction of the United States and made it more likely that activities abroad that are the subjects of independent CIA intelligence interest also will be the subjects of criminal investigations or prosecutions. Thus, it is likely that issues of source protection in subsequent criminal proceedings will arise more frequently in the future.

Although the Agency generally does not provide information to law enforcement authorities for use as evidence in criminal proceedings, such information still may be indirectly implicated in criminal proceedings, particularly if the CIA intelligence is relevant to the prosecution's case, has been used in some other fashion by the law enforcement agency, or contains statements or materials that tend to exculpate the defendant. Additionally, when CIA possesses intelligence derived from electronic surveillance on the subject of a criminal prosecution, that intelligence may be subject to disclosure under Section 3504 of the Federal Criminal Code, even if the information was not used in the criminal prosecution.

In those cases in which CIA sources and methods are implicated in criminal proceedings, Agency attorneys, in conjunction with attorneys from the Department of Justice, have employed a variety of legal procedures, including seeking ex parte and in camera review, to protect classified information from unnecessary compromise. The Classified Information Procedures Act has proven to be a particularly valuable tool in protecting sources and methods from unnecessary disclosure.

CIA works closely with the Office of Intelligence Policy and Review (OIPR) and other divisions in the Department of Justice to ensure that Agency assistance to law enforcement is consistent with the law enforcement proviso of the National Security Act of 1947 and compatible with the necessity to protect Agency sources and methods. Besides addressing issues regarding the scope of assistance that the Agency may lawfully provide, CIA's Office of General Counsel works with OIPR to ensure that CIA collection activities affecting U.S. persons are conducted in a lawful fashion.

CIA also works closely with the Criminal Division of the Department of Justice as a result of the requirement contained in 28 U.S.C. 535 and Executive Order 12333 that the CIA report to the Attorney General possible violations of federal criminal laws by employees and possible violations of certain federal criminal laws by non-employees. The investigation and prosecution of reported violations of law often involves resolving difficult issues concerning the availability of sensitive information relating to intelligence sources and methods, which may be needed by the prosecutor, the defendant, or both to support their respective legal positions at trial.

Similar concerns are present in cases involving the prosecution of former CIA assets or employees. In a growing number of cases, former CIA assets and employees have claimed that their activities were authorized by or undertaken on behalf of the CIA. This so-called "CIA defense" requires the Agency to take various legal steps to refute such claims while protecting the sensitivity of the information concerning their former relationships. These steps include producing affidavits and documents for ex parte, in camera review by the court and even producing witnesses for trial. CIPA has been helpful in responding to these assertions.